IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.2784 of 2006
Date of Decision:- 07.12.2006

Rajbir Singh and another .....Petitioner(s)

through
Dr.Surya Parkash, Advocate.

vs.

Avi Singh and another .....Respondent(s)

through
Mr.Rakesh Nagpal, Advocate.

***

CORAM:- HON'BLE MR. JUSTICE SURYA KANT.

***

SURYA KANT, J. (ORAL)

This revision petition is preferred against the order dated 27.3.2006 passed by the learned District Judge, Kaithal, restraining the petitioners from alienating the suit land.

The facts may be briefly noticed. Petitioner No.1 (Rajbir Singh) had two sons, namely (i) Surinder Singh and (ii) Joginder Singh (petitioner No.2). Surinder Singh unfortunately died on 26.4.2000 leaving behind his minor son (respondent No.1) and widow (respondent No.2). There are allegations and counter allegations between the parties regarding the death of Surinder Singh.

Undisputedly, there is a piece of land measuring 22 ½ acres apart from other ancestral properties. There was a residential house at Kaithal which, however, appears to have been sold on 25.4.2001.

The minor son and widow of the deceased son of petitioner No.1 have filed a suit for permanent injunction to restrain the petitioners from alienating the ancestral properties in which the minor son of the deceased has acquired a share by birth. In the aforementioned suit, an application under Order 39 Rules 1 and 2 CPC was also moved by the respondents. The aforesaid application was dismissed by the learned Additional Civil Judge (Sr.Div.), Kaithal after observing that the respondents have an alternative remedy to challenge the alienation, if any, in respect of the ancestral property.

The learned First Appellate Court however, vide the impugned order, has observed that in view of the compromise deed dated 13.3.2001 which is signed by both the parties and which amounts to a family settlement between them, respondent No.1 is entitled to one-third share in the ancestral property during the life time of petitioner No.1 and after the death of petitioner No.1, he is entitled to half share, as admitted by the petitioners, who are parties to the alleged family settlement dated 13.3.2001.

On May 18, 2006, it was stated on behalf of the petitioners that petitioner No.1 was ready and willing to transfer the share of respondent No.1 in the latter's favour subject to the condition that the said land shall not be alienated by respondent No.2 till respondent No.1 attains majority.

In the light of the above-stated statement, notice of motion was issued and in response thereto, the respondents have put in their appearance.

Learned counsel for the petitioners has now come up with a revised stand and has contended that petitioner No.1 is ready and willing to transfer only one-fifth share in favour of respondent No.1 and not the one-

third share as earlier agreed to vide the alleged compromise deed dated 13.3.2001. The aforesaid offer is not acceptable to learned counsel for the respondents who is duly instructed by respondent No.2, who is present in Court.

On merits, it is argued on behalf of the petitioners that suit for permanent injunction filed by the respondents is not maintainable and only a declaratory suit challenging the alienation, if any, of the ancestral property, could be instituted by them. Reliance has been placed upon a Division Bench judgment of this Court in the case of **Jujhar Singh vs. Giani Talak Singh**, 1987 (1) PLR 399.

After hearing learned counsel for the parties, I do not find any merit in this revision petition. The alleged compromise deed-cum-family settlement dated 13.3.2001 is likely to be the moot issue, to be determined by the trial Court. If the said instrument is assumed to have been validly executed, it will be a difficult proposition to be canvassed on behalf of the petitioners that the property still continues to be an ancestral property. It has been pointed out by learned counsel for the respondents that petitioner No.1 has already entered into an agreement to sell 18 acres of land out of the total land measuring 22-1/2 acres. If that is so, the rights of the minor, namely, respondent No.1 are completely at stake.

Suffice to say at this stage, respondent No.1 i.e. minor son of the deceased has made out a *prima facie* case and his interest has been rightly protected by the learned Ist appellate Court during the pendency of the suit. The balance of convenience also lies in his favour. Similarly, if the petitioners succeed in disposing of the subject property thereby leaving nothing for respondent No.1, it will not only cause an irreparable loss to him

but will also force him to have multiple litigation which will be contrary to the interest of a minor.

Consequently and for the reasons afore-stated, I do not find any merit in this revision petition which is accordingly dismissed.

December 07, 2006 **(SURYA KANT)**
poonam **JUDGE**

`